Supreme Court, U.S.
FILED
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No. 06-84

IN THE
Supreme Court of the United States

SAFECO INSURANCE COMPANY OF AMERICA, ET AL.,
Petitioners,

v.

CHARLES BURR, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. CV 01-1464-BR

LORI SPANO, ET AL.,
Plaintiffs,

v.

SAFECO INSURANCE COMPANY OF OREGON, ET AL.,
Defendants.

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
10/2/01	1	Complaint *Demand for Jury Trial* Filing Fee collected. Receipt #: 439987 issued Summons issued as to Safeco Corporation. Filed by Lori Spano against Safeco Corporation. (jlr,) (Entered: 10/03/2001)
		* * * * *
11/13/01	10	Answer to Complaint *Defenses and Affirmative Defenses* (Related Doc # 1). Filed by Safeco Corporation. (ljb,) (Entered: 11/14/2001)
		* * * * *
12/21/01	13	Motion for Leave *to File a First Amended Complaint, Oral Argument Requested.* Filed by Lori Spano. (ljb,) (Entered: 12/27/2001)
12/21/01	14	Memorandum in Support of *Plaintiff's Motion for Leave to File a First Amended Complaint.* Filed by Lori

		Spano. (Related document(s)13) (ljb,) (Entered: 12/27/2001)
1/2/02	17	Protective Order by Stipulation: Signed 1/2/02 by Judge Anna J. Brown. (ljb,) (Entered: 01/07/2002)
		* * * * *
1/3/02	16	Memorandum in Opposition *to Plaintiff's Motion for Leave to File First Amended Complaint.* Filed by Safeco Corporation. (Related motion(s)13) (sm,) (Entered: 01/03/2002)
1/8/02	18	**CIVIL MINUTES:** Record of Proceeding (Rule 16 Conference) – ORDER: All pending Deadlines are STRICKEN. Further Status Conference set for 4/1/2002 at 10:00AM. Joint Status Report due 3/25/2002. Plaintiff's Motion (#13) to file Amended Complaint is GRANTED and to be filed by 1/14/2002. Ordered by Judge Anna J. Brown. Counsel Present for Plaintiff: Steve Larson; Steve Berman. Counsel Present for Defendant: John Bennett. Court Reporter: Dennis Apodaca. (sm,) (Entered: 01/09/2002)
1/9/02	19	First Amended Complaint. Filed by Alan Opoien, Lori Spano against Safeco Corporation. (ljb,) (Entered: 01/11/2002)
1/24/02	20	Answer *Defenses and Affirmative Defenses to First amended Complaint.* Filed by Safeco Corporation. (Related document(s)19) (ljb,) (Entered: 01/25/2002)
		* * * * *

6/4/02	34	Motion for Leave *to File a Second Amended Complaint.* Filed by all plaintiffs. (ljl,) (Entered: 06/07/2002)
6/4/02	35	Memorandum in Support *of Plaintiffs' Motion for Leave to File a Second Amended Complaint.* Filed by all plaintiffs. (Related document(s)34) (ljl,) (Entered: 06/07/2002)

* * * * *

6/7/02	37	Stipulated Dismissal of Plaintiff Alan Opoien. ORDERED, ADJUDGED AND DECREED that plaintiff Alan Opoien is dismissed from this case. Signed 6/6/02 by Judge Anna J. Brown. (ljl,) (Entered: 06/10/2002)

* * * * *

6/18/02	41	Memorandum in Opposition *to Plaintiff's Motion for Leave to File a Second Amended Complaint.* Filed by Safeco Corporation. (Related motion(s)34) (ljl,) (Entered: 06/20/2002)
7/1/02	42	Reply to Motion *for Leave to File a Second Amended Complaint.* FILED UNDER SEAL. Filed by Lori Spano. (Related motion(s)34) (ljl,) (Entered: 07/02/2002)
7/1/02	43	Affidavit of *Steve D. Larson in Support of Plaintiff's Reply.* FILED UNDER SEAL. Filed by Lori Spano. (Related document(s)42) (ljl,) (Entered: 07/02/2002)

* * * * *

7/9/02	45	**CIVIL MINUTES:** Record of Order – The Court has completed its consideration of Plaintiff's Motion for Leave to

		File a Second Amended Complaint (#46) and Defendant Safeco's Opposition. Consistent with the Court's resolution of similar motions in the other FCRA cases assigned to this Court, and in the exercise of discretion, the Court GRANTS Plaintiff's Motion. Plaintiff shall file the Second Amended Complaint no later than 7/19/2002. Ordered by Judge Anna J. Brown. (sm,) (Entered: 07/09/2002)
7/10/02	46	Second Amended Complaint *for Violation of the Fair Credit Reporting Act.* Filed by Lori Spano against Safeco Insurance Company of America. (ljl,) (Entered: 07/11/2002)

* * * * *

7/22/02	48	**CIVIL MINUTES:** Record of Proceedings (Status Conference) – ORDER: Plaintiffs' ORAL request to add additional plaintiff/putative class representative is ALLOWED. Third Amended Complaint to be filed by 7/24/2002; Defendant's Answer to be filed by 8/7/2002. Other pending dates confirmed. Ordered by Judge Anna J. Brown. Counsel Present for Plaintiff: Steve Larson; Steve Berman. Counsel Present for Defendant: John Bennett. Court Reporter: Nancy Walker. (sm,) (Entered: 07/22/2002)
7/23/02	49	Third Amended Complaint *for Violation of the Fair Credit Reporting Act.* Filed by Patricia McGrath, Charles Burr, Joan Horton, Shannon Massey, Lori Spano against Safeco Insurance Company of America. (ljl,) (Entered: 07/24/2002)

8/8/02	50	Stipulation of Dismissal of Safeco Corporation as a Defendant and Change of Caption. by Judge Anna J. Brown. Signed 8/6/02 (ljl,) (Entered: 08/09/2002)
8/8/02	51	Answer, *Defenses and Affirmative Defenses to Plaintiffs' Third Amended Complaint for Violation of the Fair Credit Reporting Act.* Filed by Safeco Insurance Company of America. (Related document(s)49) (ljl,) (Entered: 08/09/2002)
9/23/02	52	Stipulated Notice of Dismissal of Party Joan Horton and Patricia McGrath. Filed by all plaintiffs. (sm,) (Entered: 09/24/2002)

* * * * *

11/22/02	76	Motion for Summary Judgment. Filed by Safeco Insurance Company of America. (ljl,) (Entered: 11/26/2002)
11/22/02	77	Memorandum in Support *of Motion for Summary Judgment. Oral Argument Requested.* Filed by Safeco Insurance Company of America. (Related document(s)76) (ljl,) (Entered: 11/26/2002)
11/22/02	78	Concise Statement of Material Fact. Filed by Safeco Insurance Company of America. (ljl,) (Entered: 11/26/2002)

* * * * *

11/27/02	84	Amended Memorandum in Support *of its Motion for Summary Judgment. Oral Argument Requested.* Filed by Safeco Insurance Company of America. (Related document(s)76) (ljl,) (Entered: 12/03/2002)

* * * * *

12/30/02	87	Response *to Defendant's Concise Statement of Material Facts in Support of Defendant's Motion for Summary Judgment. FILED UNDER SEAL.* Filed by all plaintiffs. (Related document(s)78) (ljl,) (Entered: 01/02/2003)
12/30/02	88	Memorandum in Opposition *to Motion for Summary Judgment. FILED UNDER SEAL.* Filed by all plaintiffs. (Related motion(s)76) (ljl,) (Entered: 01/02/2003)
12/30/02	89	Affidavit of *Birney Birnbaum in Support of Opposition to Defendant's Motion for Summary Judgment. FILED UNDER SEAL.* Filed by Charles Burr, Shannon Massey, Lori Spano. (Related document(s)88) (ljl,) (Entered: 01/02/2003)
12/30/02	90	Affidavit of *Mark A. Friel in Support of Opposition to Motion for Summary Judgment. FILED UNDER SEAL.* Filed by Charles Burr, Shannon Massey, Lori Spano. (Related document(s)88) (ljl,) (Entered: 01/02/2003)
		* * * * *
1/3/03	92	Affidavit of *Birny Birnbaum (with original Signature Page). FILED UNDER SEAL.* Filed by all plaintiffs. (Related document(s)89) (ljl,) (Entered: 01/03/2003)
		* * * * *
1/10/03	94	Motion to Supplement *the Concise Statement of Material Facts.* Filed by Safeco Insurance Company of America. (ljl,) (Entered: 01/13/2003)
1/10/03	95	Memorandum in Support *of Motion to Supplement the Concise Statement*

		of Material Facts. Filed by Safeco Insurance Company of America. (Related document(s)94) (ljl,) (Entered: 01/13/2003)
1/10/03	96	Affidavit of *John A. Bennett in Support of Motion to Supplement Concise Statement of Material Facts.* Filed by Safeco Insurance Company of America. (Related document(s)94) (ljl,) (Entered: 01/13/2003)
		* * * * *
1/10/03	98	Reply to Motion *for Summary Judgment.* Filed by Safeco Insurance Company of America. (Related motion(s)76) (ljl,) (Entered: 01/13/2003)
		* * * * *
1/10/03	100	Reply *to Plaintiffs' Statement of Additional Facts.* Filed by Safeco Insurance Company of America. (Related document(s)87) (ljl,) (Entered: 01/13/2003)
1/10/03	101	Affidavit of *John A. Bennett in Support of Reply to Plaintiffs' Statement of Additional Facts.* Filed by Safeco Insurance Company of America. (Related document(s)100) (ljl,) (Entered: 01/13/2003)
1/10/03	102	Supplemental Affidavit of *Robert C. Taylor in Support of Reply to Plaintiffs' Statement of Additional Facts. (not an original signature).* Filed by Safeco Insurance Company of America. (Related document(s)100) (ljl,) (Entered: 01/13/2003)
1/10/03	103	Motion to Strike *Affidavit of Birny Birnbaum.* Filed by Safeco Insurance Company of America. (Related document(s)92) (ljl,) (Entered: 01/13/2003)

1/10/03	104	Memorandum in Support *of Motion to Strike the Affidavit of Birny Birnbaum.* Filed by Safeco Insurance Company of America. (Related document(s)103) (ljl,) (Entered: 01/13/2003)

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1/14/03	107	Supplemental Affidavit of *Robert C. Taylor in Support of Reply to Plaintiffs' Statement of Additional Facts. Original signature.* Filed by Safeco Insurance Company of America. (Related document(s)100, 102) (ljl,) (Entered: 01/14/2003)
1/14/03	108	Supplemental Affidavit of *Barbara Steeves in Support of Safeco's Supplemental Concise Statement of Material Facts. (Original signature) (faxed copy is attached to affidavit of John Bennett).* Filed by Safeco Insurance Company of America. (Related document(s)96) (ljl,) (Entered: 01/14/2003)

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1/21/03	110	Memorandum in Opposition *to Defendant Safeco Insurance Co's Motion to Strike Affidavit of Birney Birnbaum. FILED UNDER SEAL.* Filed by all plaintiffs. (Related motion(s)103) (ljl,) (Entered: 01/22/2003)
1/21/03	111	Memorandum in Opposition *to Defendant Safeco's Motion to Supplement the Concise Statement of Material Facts. FILED UNDER SEAL.* Filed by all plaintiffs. (Related motion(s)94) (ljl,) (Entered: 01/22/2003)

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2/3/03	113	Reply to Motion *to Supplement the Concise Statement of Material Facts.* Filed by Safeco Insurance Company of America. (Related motion(s)94) (dls,) (Entered: 02/04/2003)

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2/3/03	115	Reply to Motion *to Strike Affidavit of Birny Birnbaum.* Filed by Safeco Insurance Company of America. (Related motion(s)103) (dls,) (Entered: 02/04/2003)

* * * * *

2/7/03	117	**CIVIL MINUTES:** Record of Order – Defendant's Motion (#94) to Supplement the Concise Statement of Material Facts is GRANTED. Defendant Supplemental Concise Statement of Material Facts by 2/10/2003; Plaintiff's supplemental response to Defendant's Supplemental Concise Statement of Material Facts and supplemental memorandum, if any, due by 2/21/2003; Defendant supplemental reply memorandum, if any, due by 2/28/2003; the Court will take Defendant's Motion for Summary Judgment (#76) and Plaintiff's Motion to Strike the Affidavit of Birny Birnbaum (#103) UNDER ADVISEMENT on 2/28/2003. (Related documents(s) 103, 76) Ordered by Judge Anna J. Brown. (sm,) (Entered: 02/07/2003)
2/10/03	118	Supplemental Concise Statement of Material Fact. Filed by Safeco Insurance Company of America. (ljl,) (Entered: 02/10/2003)

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2/20/03	120	Response *to Defendant's Supplemental Concise Statement of Material Fact (FILED UNDER SEAL).* Filed by all plaintiffs. (Related document(s)118) (dls,) (Entered: 02/20/2003)
2/26/03	121	Reply *to Plaintiffs' Response to Defendant's Supplement Concise Statement of Material Facts in Support of Defendant's Motion for Summary Judgment.* Filed by Safeco Insurance Company of America. (Related document(s)87) (ljl,) (Entered: 02/28/2003)

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3/4/03	123	Motion for Leave *to File a Second Amended Complaint. Oral Argument Requested.* Filed by all plaintiffs. (ljl,) (Entered: 03/05/2003)
3/4/03	124	Memorandum in Support *of Motion for Leave to File a Second Amended Complaint.* Filed by all plaintiffs. (Related document(s)123) (ljl,) (Entered: 03/05/2003)

* * * * *

3/14/03	126	Memorandum in Opposition *to Plaintiffs' Motion for Leave to File a Second Amended Complaint.* Filed by Safeco Insurance Company of America. (Related motion(s)123) (kw,) (Entered: 03/14/2003)
3/14/03	127	Affidavit of *John A. Bennett in Support of Defendant Safeco Insurance Company of America's Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint.* Filed by Safeco Insurance Company of America.

(Related document(s)126) (kw,) (Entered: 03/14/2003)

* * * * *

3/25/03 129 Reply to Motion *for Leave to File a Second Amended Complaint. FILED UNDER SEAL.* Filed by all plaintiffs. (Related motion(s)123) (ljl,) (Entered: 03/25/2003)

* * * * *

4/22/03 131 **OPINION AND ORDER:** Order Granting Defendant's Motion for Summary Judgment (Related Doc #76); Order Denying as Moot Defendant's Motion to Strike the affidavit of Birny Birnbaum (Related Doc #103); Order Granting in part and Denying in part Plaintiffs' Motion for Leave to File a Second (sic) Amended Complaint (Related Doc #123). Fourth Amended Complaint due by 4/29/03. See 29 page Opinion and Order. Signed on 4/21/03 by Judge Anna J. Brown. (ljl,) (Entered: 04/22/2003)

4/24/03 132 Fourth Amended Complaint. Filed by Charles Burr, Shannon Massey, Lori Spano against American States Insurance Company, Safeco Insurance Company of Illinois, Safeco Insurance Company of Oregon. (ljl,) (Entered: 04/28/2003)

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5/12/03 140 Answer to Amended Complaint *(Fourth Amended Complaint), Defenses and Affirmative Defenses.* (Related Doc # 132). Filed by American States Insurance Company, Safeco Insurance Company of

Illinois, Safeco Insurance Company of Oregon. (ljl,) (Entered: 05/12/2003)

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5/23/03	143	Motion to Certify the Class. Filed by all plaintiffs. (Larson, Steve) (Entered: 05/23/2003)
6/6/03	144	Motion for Summary Judgment. Filed by all defendants. (ljl,) (Entered: 06/09/2003)
6/6/03	145	Concise Statement of Material Fact. Filed by all defendants. (ljl,) (Entered: 06/09/2003)
6/6/03	146	Memorandum in Support *of Motion for Summary Judgment.* Filed by all defendants. (Related document(s)144) (ljl,) (Entered: 06/09/2003)

* * * * *

6/16/03	148	**CIVIL MINUTES:** Record of Order by Judge Anna J. Brown. In light of the Court's rulings at oral argument on 5/21/2003 in the matter of Mark v. Valley Property and Casualty, CV 01-1575 BR, the issues taken under advisement in that case, and the potential effect of the rulings in that case, the Court will defer taking Defendants' Motion for Summary Judgment (#144) under advisement until after the Court's opinion has been issued in the Mark case. The Court took the pending Motion in Mark under advisement on 6/2/2003, and an opinion will be issued in due course. (sm,) (Entered: 06/16/2003)
6/20/03	149	Response *to Defendants' Concise Statement of Material Facts. FILED UNDER SEAL.* Filed by Charles Burr, Shannon

Massey, Lori Spano. (Related document(s)145) (ljl,) Modified on 6/23/2003 (ljl,). (Entered: 06/23/2003)

6/20/03 150 Memorandum in Opposition *to Defendants' Motion for Summary Judgment. FILED UNDER SEAL.* Filed by Charles Burr, Shannon Massey, Lori Spano. (Related motion(s)144) (ljl,) (Entered: 06/23/2003)

6/20/03 151 Affidavit of *Mark A. Friel in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment. FILED UNDER SEAL.* Filed by Charles Burr, Shannon Massey, Lori Spano. (Related document(s)150) (ljl,) (Entered: 06/23/2003)

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7/7/03 153 Motion to Strike *Affidavit of Birny Birnbaum. Oral Argument Requested.* Filed by American States Insurance Company, Safeco Insurance Company of Illinois, Safeco Insurance Company of Oregon. (Related document(s)89, 92) (ljl,) (Entered: 07/09/2003)

7/7/03 154 Memorandum in Support *of Motion to Strike the Affidavit of Birny Birnbaum.* Filed by all defendants. (Related document(s)153) (ljl,) (Entered: 07/09/2003)

7/7/03 155 Reply to Motion *for Summary Judgment.* Filed by all defendants. (Related motion(s)144) (ljl,) (Entered: 07/09/2003)

7/7/03 156 Reply *to Statement of Additional Facts.* Filed by all defendants. (ljl,) (Entered: 07/09/2003)

* * * * *

7/16/03	158	Memorandum in Opposition *to Defendants' Motion to Strike Affidavit of Birny Birnbaum (FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER).* Filed by Charles Burr, Shannon Massey, Lori Spano. (Related motion(s)153) (kw,) (Entered: 07/22/2003)
7/29/03	159	Reply to Motion *to Strike Affidavit of Birny Birnbaum. ORAL ARGUMENT REQUESTED.* Filed by all defendants. (Related motion(s)153) (ljl,) (Entered: 07/29/2003)

* * * * *

12/19/03	165	**OPINION AND ORDER:** For the Reasons in the 17 page opinion and order, the Court Grants Defendants' Motion for Summary Judgment (Related Doc #144) on the claims of Plaintiffs Massey and Burr and DISMISSES these claims with prejudice. The Court DENIES Defendants' Motion for Summary Judgment (#144) on the claims of Plaintiff Spano. In addition, the Court GRANTS Defendants' Motion to Strike the Affidavit of Burney Birnbaum (Related Doc #153). Signed on 12/19/03 by Judge Anna J. Brown. (ljl,) (Entered: 12/22/2003)

* * * * *

1/14/04	167	Motion for entry of Rule 54(b) Judgment. Filed by all plaintiffs. (Larson, Steve) (Entered: 01/14/2004)
1/14/04	168	Memorandum in Support of Plaintiffs' Motion for Entry of Rule 54(b) Judgment. Filed by all plaintiffs. (Related document(s)167) (Larson, Steve) (Entered: 01/14/2004)

1/16/04	169	**CIVIL MINUTES:** Record of Proceedings (Rule 16 Conference) before Judge Anna J. Brown. Counsel Present for Plaintiff: Steve Larson. Counsel Present for Defendant: John Bennett. Court Reporter: Amanda LeGore. ORDER: Plaintiffs WITHDRAW the pending Motion for Class Certification (#143), and the Motion is therefore DENIED as MOOT. (sm,) (Entered: 01/16/2004)
1/26/04	170	Response to Motion *for Entry of Final Judgment, and Memorandum in Support of Defendant's Motion for Interlocutory Appeal. Oral Argument Requested.* Filed by all defendants. (Related motion(s)167) (ljl,) (Entered: 01/27/2004)
1/26/04	171	Motion *for Certification of Interlocutory Appeal.* Filed by all defendants. (ljl,) (Entered: 01/27/2004)

* * * * *

2/6/04	173	Reply to Motion *for Entry of Final Judgment Under FRCP 54(b) and Memorandum in Opposition to Defs' Motion for Certification of Interlocutory Appeal.* Filed by all plaintiffs. (Related motion(s)167) (Larson, Steve) (Entered: 02/06/2004)
2/17/04	174	Reply *Memorandum in Support of Their Motion for Interlocutory Appeal.* Filed by American States Insurance Company, Safeco Insurance Company of Illinois, Safeco Insurance Company of Oregon. (Related document(s)171) (mja,) (Entered: 02/18/2004)

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2/26/04	176	**ORDER:** Opinion and Order: For the reasons stated, the Court GRANTS Plaintiffs' Motion for Rule 54(b) Entry of Final Judgment against Plaintiffs Massey and Burr (#167) and DENIES Defendants' Motion for Certification of Interlocutory Appeal (#171). (See 11 page Opinion) Signed on 2/26/2004 by Judge Anna J. Brown. (sm,) (Entered: 02/26/2004)

* * * * *

3/3/04	178	Amended Opinion and Order GRANTING Defendants' Motion for Summary Judgment (#144) on the claims of Plaintiffs Massey and Burr, and DENYING the Motion on the claims of Plaintiff Spano; GRANTING Defendants' Motion to Strike(#153) the Affidavit of Birny Birnbaum. (see original Opinion #165) Signed on 3/3/2004 by Judge Anna J. Brown. (sm,) Additional attachment(s) added on 3/8/2004 (sm,). (Entered: 03/03/2004)
3/5/04	179	Stipulation *to Stay Proceedings Pending Appeal* by all plaintiffs. Filed by all plaintiffs. (Larson, Steve) (Entered: 03/05/2004)
3/5/04	180	Motion for Judgment *FRCP 54(B) Judgment.* Filed by all plaintiffs. (Larson, Steve) (Entered: 03/05/2004)
3/8/04	181	FRCP 54(B) Judgment. All plaintiffs' claims against Safeco-America, Massey's claims against Safeco-Illinois, and Burr's claims against American States and Safeco-Oregon, are DISMISSED with prejudice. Signed on 3/8/03 by

		Judge Anna J. Brown. (ljl,) (Entered: 03/10/2004)
3/10/04	182	Order. The Stipulation to Stay Proceedings Pending Appeal is APPROVED. This action is STAYED. Ordered by Judge Anna J. Brown. (sm,) (Entered: 03/10/2004)
3/31/04	183	Notice of Appeal with attached Representation Statement and Statement Of Related Cases To USCA – 9th Circuit from judgment entered 3/10/04. Filing fee in amount of $255.00 collected; Receipt No. 175562 issued. Filed by plaintiff-appellants Shannon Massey and Charles Burr. (Related Document(s): Judgment, 181) (tomg,) (Entered: 04/01/2004)
		* * * * *
4/1/04		Notification of Appeal mailed to USCA – 9th Circuit and to counsel along with copy of docket sheet. CADS mailed to Court of Appeals. (Related Document(s): Notice of Appeal, 183) (tomg,) (Entered: 04/01/2004)
		* * * * *
4/21/04	186	Order from USCA – 9th Circuit re assignment of appeal number CA 04-35313 for appeal filed 3/31/04, and briefing schedule. (Related Document(s): Notice of Appeal, 183) (tomg,) (Entered: 05/30/2004)
		* * * * *
6/3/04	188	Certificate of Record transmitted to USCA – 9th Circuit, re appeal CA 04-35313 filed by Shannon Massey on 3/31/04. (Related Document(s): Notice

of Appeal, 183) (tomg,) (Entered: 06/03/2004)

* * * * *

5/4/06	194	MANDATE of USCA for the 9th Circuit re Notice of Appeal, Case Number 04-35313, 183. The decision of the District Court is REVERSED and REMANDED. (Related Document(s): Notice of Appeal, 183) (ecp,) (Entered: 05/05/2006)
5/5/06	195	Scheduling Order by Anna J. Brown. The Court has received the Mandate from the Ninth Circuit Court of Appeals in this matter. The Court directs the parties to confer regarding a case management plan and to submit no later than 5/19/2006 a jointly proposed plan for future handling of this matter, including a proposed schedule for any remaining dispositive motion practice and for trial. The Court will conduct a Rule 16 Conference on 5/31/2006 at 9:30AM to adopt a case management plan. (sm,) (Entered: 05/05/2006)

* * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 04-35313

LORI SPANO, ET AL.,
Plaintiffs,

AND

CHARLES BURR, ET AL.,
Plaintiffs-Appellants,

v.

SAFECO INSURANCE COMPANY OF AMERICA, ET AL.,
Defendants-Appellees.

DOCKET PROCEEDINGS

DATE	DOCKET ENTRY
4/15/04	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): no. setting schedule as follows: appellant's designation of RT is due 4/12/04; appellee's designation of RT is due 4/20/04; appellant shall order transcript by 4/30/04; court reporter shall file transcript in DC by 6/1/04; certificate of record shall be filed by 6/7/04; appellant's opening brief is due 7/19/04; appellees' brief is due 8/16/04; appellants' reply brief is due 8/30/04; [04-35313] (dg) [04-35313]
	* * * * *
8/4/04	Filed Filed Under Seal original & 15 copies Appellant Charles Burr, Shannon Massey's

opening brief (Informal: n) 45 pages & 5 Excs in 2 Vols.; served on 8/2/04 [04-35313] (gva) [04-35313]

* * * * *

8/6/04 Filed original & 15 copies Federal Trade Commission's amicus curiae brief of 28 pages; in support of aplts; served on 8/5/04 [04-35313] (gva) [04-35313]

* * * * *

10/8/04 Filed original & 15 copies appellee Safeco Ins. Co. Amer, American States Ins., Safeco Insurance Co, Safeco Ins Co of OR's 58 pages brief, 5 Supplemental Excs.; served on 10/1/04 [04-35313] (gva) [04-35313]

* * * * *

11/8/04 Filed original and 15 copies appellants Charles Burr, Shannon Massey reply brief, (Informal: No) 29 pages; 1 vol. of Supp EOR; served on 11/5/04 [04-35313] (ru) [04-35313]

* * * * *

2/23/05 Filed order (Deputy Clerk: hh) Plft's and defs jt mtn for a procedural order regarding oral arg is granted. This cts ntc of hearing of 1/21/05 and its order of 2/17/04 are modified as follows: The first argument of the date shall concern the following common question: Whether an insurance company takes adverse action within the meaning of 15USC1681(d)(1) due to an increase in any charge for insurance when it charges a consumer a higher initial premium for insurance that it would have otherwise charged based, at least in part, on a consumer report. Each side is allocated 30 minutes to

address this question. The FTC's req to appear before the ct at oral arg is granted. Plfts csl and the FTC shall divide their time btwn themselves and may reserve a portion of their 30 minutes for rebuttal. Defs will select one atty to argue for their side. Any time not used will be waived. Following argument on the common issue, each of the five cases will be argued individually with the arg for cases Ashby v. Farmers Group and Ashby v. Farmers Ins. Co. of Oregon remaining consolidated. Each side will be allocated 10 minutes and the pltfs may reserve a portion of their 10 minutes for rebuttal in each case. [03-35673, 03-35695, 03-35848, 04-35279, 04-35313, 04-35394] (crw) [03-35673 03-35695 03-35848 04-35279 04-35313 04-35394]

* * * * *

3/8/05 ARGUED AND SUBMITTED TO Stephen R. REINHARDT, Marsha S. BERZON, Jay S. BYBEE [03-35695, 03-35848, 04-35279, 04-35313] (dr) [03-35695 03-35848 04-35279 04-35313]

8/4/05 FILED MEMORANDUM DISPOSITION: REVERSED AND REMANDED. (Terminated on the Merits after Oral Hearing; Reversed; Written, Unsigned, Unpublished. Stephen R. REINHARDT, Marsha S. BERZON, Jay S. BYBEE). FILED AND ENTERED JUDGMENT. [04-35313] (gva) [04-35313]

* * * * *

9/1/05 [5551439] Filed original & 50 copies Aples' petition for panel rehearing and petition for rehearing en banc of 20 pages [4171 words];

served on 8/31/05. (PANEL AND ALL ACTIVE JUDGES AND ALL INTERESTED SENIOR JUDGES) [04-35313] (gva) [04-35313]

10/13/05 Filed Aples' motion for leave to file amended petition for rehearing and rehearing en banc; served on 10/12/05 (PANEL) [5595593] (gva) [04-35313]

10/18/05 Filed order (Stephen R. REINHARDT, Marsha S. BERZON, Jay S. BYBEE): Aples Safeco Ins. Co. of America, American States Ins. Co. Safeco Ins. Co of Illinois and Safeco Ins. Co of Oregon's motion for leave to file an amended petition for rehearing and rehearing en banc is granted. The amended petition shall be filed 14 days of the date of this order. (phoned/faxed) [5595593-1] [04-35313] (gva) [04-35313]

11/1/05 [5615732] Filed original and 50 copies Aples' petition for panel rehearing and petition for rehearing en banc of 20 pages [4,195 words]; served on 10/31/05 (PANEL AND ALL ACTIVE JUDGES AND ALL INTERESTED SENIOR JUDGES) [04-35313] (gva) [04-35313]

1/25/06 Filed order (Stephen R. REINHARDT, Marsha S. BERZON, Jay S. BYBEE): In light of the new opinion filed in Reynolds v. Hartford fin. Serv. Group, Inc., No. 03-35695; Edo v. Geico Gen. Ins. Co., No. 04-35279, aples shall notify this Court within 14 days whether they wish to designate their previously filed petition for rehearing and rehearing en banc as their filing under FRAP 35(b) and Circuit Rule 35-1, or whether they intend to file a new or amended petition within the time period specified by the

rules. A failure timely to so notify this court shall be deemed a withdrawal of the petition. [04-35313] (gva) [04-35313]

* * * * *

2/15/06 [5724707] Filed original & 50 copies Aples' petition for panel rehearing and petition for rehearing en banc of 20 pages [4,167 words]; served on 2/14/06 (PANEL AND ALL ACTIVE JUDGES AND ALL INTERESTED SENIOR JUDGES) [04-35313] (gva) [04-35313]

* * * * *

3/29/06 Filed Aplts' response to Aples' second amended petition for rehearing en banc of 12 pages; served on 3/28/06 (PANEL AND ALL ACTIVE JUDGES AND ALL INTERESTED SENIOR JUDGES) [04-35313] (gva) [04-35313]

4/20/06 Filed order (Stephen R. REINHARDT, Marsha S. BERZON, Jay S. BYBEE): ... The petition for rehearing and rehearing en banc is denied. [04-35313] (gva) [04-35313]

5/2/06 MANDATE ISSUED. Costs taxed $649.40 against aple. [04-35313] (gva) [04-35313]

7/25/06 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-84 filed on 7/19/06. (PANEL) [04-35313] (gva) [04-35313]

10/2/06 Received notice from Supreme Court, petition for certiorari GRANTED on 9/26/06. Supreme Court No. 06-84 [The case is consolidated with No. 06 100 and a total of 1 hour is allotted for oral argument] (PANEL) (gva) [04-35313]

[Attorney Names/Addresses Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. CV 01-1464 BR

LORI SPANO, ET AL.,
Plaintiffs,

v.

SAFECO INSURANCE COMPANY OF AMERICA,
Defendant.

PLAINTIFFS' THIRD AMENDED COMPLAINT FOR VIOLATION OF THE FAIR CREDIT REPORTING ACT

SUMMARY AND OVERVIEW

1. This is a class action on behalf of all purchasers of insurance policies from defendant and its subsidiaries and affiliates for personal lines of insurance from January 2000 to date (the "Class Period").

2. Defendant, and its subsidiaries and affiliates, sell personal lines of insurance in Oregon and in other states.

3. During the Class Period, defendant and its affiliates and subsidiaries used information contained in consumer reports when underwriting or rating policies for personal lines of insurance. Defendant has taken or participated in taking adverse actions with respect to plaintiffs and those similarly situated based on this information, but failed to provide the notification of the adverse action as required by the Fair Credit Reporting Act, 15 U.S.C. § 1681.

JURISDICTION AND VENUE

4. Jurisdiction is conferred by 15 U.S.C. § 1681. The claims asserted herein arise under 15 U.S.C. § 1681.

5. Venue is proper in this District pursuant to 15 U.S.C. § 1681. Defendant does business in this District and many of the insurance policies involved in this case were issued in this District.

BACKGROUND TO THE CLASS PERIOD

6. Based on information and belief, at least by January 2000, defendant and its affiliates and subsidiaries began using consumer credit report information to underwrite or rate insurance policies for personal lines of insurance.

FIRST CLAIM FOR RELIEF

For Violation of 15 U.S.C. § 1681

7. Plaintiffs incorporate paragraphs 1 through 6 by reference.

8. Plaintiffs, and all others similarly situated, purchased insurance policies from defendant or its subsidiaries and affiliates for personal lines of insurance during the Class Period. Defendant took an adverse action with respect to underwriting or rating the policies of plaintiffs, and all others similarly situated, based on information contained in consumer reports.

9. 15 U.S.C. § 1681(m) requires users of consumer reports to provide oral, written or electronic notice of any adverse action taken with respect to any consumer that is based in whole or in part on information obtained in a consumer report.

10. Defendant willfully failed to notify plaintiffs, and all others similarly situated, of the adverse action.

11. 15 U.S.C. § 1681(n) provides that any person who willfully fails to comply with any requirement imposed under § 1681(n) is liable to the consumer for damages of

not less than $100 and not more than $1,000. Accordingly, plaintiffs, and all those similarly situated, are entitled to recover statutory damages.

12. Plaintiffs, and all those similarly situated, are also entitled under 15 U.S.C. § 1681(n) to recover such amount of punitive damages as the court may allow.

13. 15 U.S.C. § 1681(n) provides that the cost of the action together with reasonable attorney fees as determined by the court are also recoverable by plaintiffs and all others similarly situated.

CLASS ACTION ALLEGATIONS

14. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased insurance policies from defendant and its subsidiaries and affiliates for personal lines of insurance from January 2000 to date.

15. The members of the Class are so numerous that joinder of all members is impracticable. During the Class Period, defendant and its subsidiaries and affiliates issued thousands of policies. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

16. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

a. Whether the underwriting and rating practices of defendant constitute adverse actions under the Fair Credit Reporting Act;

b. Whether 15 U.S.C. § 1681 was violated by defendant;

17. Plaintiffs' claims are typical of those of the Class because plaintiffs and the Class failed to receive notifica-

tion of the alleged adverse actions as required by the Fair Credit Reporting Act.

18. Plaintiffs will adequately protect the interests of the Class and have retained counsel who are experienced in class action securities litigation. Plaintiffs have no interests which conflict with those of the Class.

19. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment as follows:

(1) Declaring this action to be a proper class action pursuant to Rule 23;

(2) Awarding plaintiffs and the members of the Class statutory damages, punitive damages, attorney fees and costs; and

(3) Awarding such other legal and equitable relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated this 23rd day of July, 2002.

STOLL STOLL BERNE LOKTING
& SHLACHTER P.C.

By: /s/ STEVE D. LARSON

N. ROBERT STOLL, OSB No. 69165
STEVE D. LARSON, OSB No. 86354
STEVEN C. BERMAN, OSB No. 95176
Telephone: (503) 227-1600

And

CHARLES A. RINGO, OSB No. 89346
Telephone: (503) 643-7500

Attorneys for Plaintiffs

[Attorney Names/Addresses Omitted]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 01-CV-1464-BR

LORI SPANO, ET AL.,
Plaintiffs,

v.

SAFECO INSURANCE COMPANY OF AMERICA,
Defendant.

DEFENDANT SAFECO INSURANCE COMPANY OF AMERICA'S ANSWER, DEFENSES AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' THIRD AMENDED COMPLAINT FOR VIOLATION OF THE FAIR CREDIT REPORTING ACT

For its Answer, Defendant SAFECO Insurance Company of America admits, denies and alleges as follows:

1.

Defendant denies Plaintiffs' allegations that this is a class action because there has been no certification of a class and no other basis alleged that Plaintiffs are authorized to appear on behalf of any other person. Defendant denies all remaining allegations in paragraph 1 of the Third Amended Complaint (hereinafter referred to as "Complaint").

2.

Defendant admits that it, some of its subsidiaries and some of its affiliates sell personal lines of insurance in

Oregon and/or in other states. Except as admitted, Defendant denies the remaining allegations in paragraph 2 of the Complaint.

3.

Defendant admits that it, some of its subsidiaries and some of its affiliates have used information within the scope of "consumer report" as defined in 15 U.S.C. § 1681a(d) when underwriting policies for personal lines of insurance. Except as admitted, Defendant denies the remaining allegations in paragraph 3 of the Complaint.

4.

Defendant admits that Plaintiffs are making their claims under 15 U.S.C. § 1681 and denies all remaining allegations.

5.

Defendant admits that it does business in the District of Oregon. Except as admitted, Defendant denies the remaining allegations in paragraph 5 of the Complaint.

6.

Defendant admits that in January of 2000 it and some of its affiliates and subsidiaries used information, including credit information, within the definition of "consumer report" set forth at 15 U.S.C. § 1681a(d) in underwriting personal automobile insurance in Oregon and Texas. Except as admitted, Defendant denies the remaining allegations in paragraph 6 of the Complaint.

7.

Defendant incorporates by reference its answers to paragraphs 1 through 6 set forth above.

8.

Defendant admits that Plaintiffs' Massey, Burr and McGrath, purchased insurance contracts with affiliates or subsidiaries of Defendant during the timeframe at issue.

Except as admitted, Defendant denies the remaining allegations in paragraph 8 of the Complaint.

9.

Defendant denies that Plaintiffs' attempt to paraphrase 15 U.S.C. § 1681m is accurate or complete, or that any answer is required to paragraph 9 of the Complaint. To the extent an answer is required, Defendant denies the allegations in paragraph 9.

10.

Defendant denies the allegations in paragraph 10 of the Complaint.

11.

Defendant denies that Plaintiffs' attempt to paraphrase 15 U.S.C. § 1681n is accurate or complete. Further, Defendant denies the allegations in paragraph 11 of the Complaint.

12.

Defendant denies the allegations in paragraph 12 of the Complaint.

13.

Defendant denies that Plaintiffs' attempt to paraphrase 15 U.S.C. § 1681n is accurate or complete. Further, defendant denies the allegations in paragraph 13 of the Complaint.

14.

Defendant denies all the allegations in paragraph 14 of the Complaint.

15.

Defendant denies the allegations of paragraph 15, except Defendant admits that it, its subsidiaries and its affiliates issued many insurance contracts from January

2000 to the date of Plaintiffs' Third Amended Complaint was filed.

16.

Defendant denies the allegations in paragraph 16 of the Complaint.

17.

Defendant denies the allegations in paragraph 17 of the Complaint.

18.

Defendant denies the allegations in paragraph 18 of the Complaint.

19.

Defendant denies the allegations in paragraph 19 of the Complaint.

FIRST DEFENSE

(FAILURE TO STATE A CLAIM)

1.

The Third Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

(DOCTRINE OF PRIMARY JURISDICTION)

2.

Primary jurisdiction for this matter is vested in the insurance division of the respective states at issue.

FIRST AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

3.

The claims asserted, or a portion thereof, are barred by the applicable statute of limitations.

SECOND AFFIRMATIVE DEFENSE

(REASONABLE PROCEDURES TO ASSURE COMPLIANCE)

4.

Pursuant to 15 U.S.C. § 1681m(c). reasonable procedures were in place to assure compliance with the provisions of 15 U.S.C. § 1681 *inter alia*, and therefore Defendant may not be held liable for any alleged violation of the Fair Credit Reporting Act.

WHEREFORE, having fully answered Plaintiffs' Third Amended Complaint, and having alleged affirmative defenses, Defendant prays for entry of Judgment as follows:

a. Denying any request to certify this matter as a class action;

b. Entry of Judgment dismissing Plaintiffs' Third Amended Complaint and granting Judgment in favor of Defendant; and

c. Including in the Judgment an award to Defendant of its reasonable costs and attorney fees.

Dated this 6th day of August, 2002.

BULLIVANT HOUSER BAILEY, PC

By /s/ JOHN A. BENNETT

JOHN A. BENNETT, OSB #75040

Telephone: (503) 228-6351

Attorneys for DEFENDANT
SAFECO Insurance Company of America

[Attorney Names/Addresses Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. CV 01-1464 BR

LORI SPANO, ET AL.,
Plaintiffs,

v.

SAFECO INSURANCE COMPANY OF AMERICA,
Defendant.

AFFIDAVIT OF MARK A. FRIEL IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT SAFECO INSURANCE COMPANY OF AMERICA'S MOTION FOR SUMMARY JUDGMENT

FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER

State of Oregon)
) ss.
County of Multnomah)

I, Mark A. Friel, being first duly sworn, state that:

1. I am one of the attorneys for plaintiffs. I make the following statements of my own personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of Defendant's Response to Plaintiffs' Second Set of Requests for Admission to Defendant Safeco Insurance Company of America ("Second RFAs"), served by defendant, Safeco Insurance Company of America, on plaintiffs on August 8, 2002.

3. Attached hereto as Exhibit 2 is a true and correct copy of excerpted portions of the transcript of the deposition of Barbara Steeves ("Steeves"), taken by plaintiffs on December 11, 2002 ("Steeves December Depo.").

4. Attached hereto as Exhibit 3 is a document marked by counsel for plaintiffs as an exhibit during the Steeves December Depo. Exhibit 3 was identified by Steeves as "a sheet that shows [plaintiff Charles] Burr's premium with [defendant's] auto program as of October 22nd and how it changed as more information about his risk characteristics were revealed and also what his premium would have been had he had the highest possible credit score." Steeves December Depo. at 19:19-20:2.

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpted portions of the transcript of the deposition of Steeves, taken by plaintiffs on May 10, 2002 ("Steeves May Depo.").

6. Attached hereto as Exhibit 5 is a true and correct copy of a letter obtained by plaintiffs from the, Oregon Department of Consumer and Business Services, dated August 22, 2000, signed, by Bob Fox ("Fox"), an analyst in defendant's State Filings Department, and addressed to the Oregon Department of Consumer and Business Services, Attention: Rates and Forms. Steeves identified Fox during her depositions in May and September 2002 as an employee of defendant who was responsible for making state insurance filings on behalf of defendant. Steeves May Depo. at 50:13-17; Steeves September Depo. at 12:18-13:1. Steeves further identified Exhibit 5 as a document she has probably seen, and confirmed the veracity of a number of statements made therein. Steeves May Depo. at 47:9-50-9.

7. Attached hereto as Exhibit 6 is a true and correct copy of excerpted portions of the transcript of the deposition of Robert Taylor ("Taylor"), taken by plaintiffs on May 10, 2002 ("Taylor Depo.").

8. Attached hereto as Exhibit 7 is a true and correct copy of an excerpted portion of a document marked by counsel for plaintiffs as an exhibit during the deposition of Taylor. Exhibit 7 was identified by Taylor as a list, taken from SAFECO Corporation's annual report, of companies within the Safeco group of companies. Taylor Depo. at 10:3-11:9.

9. Attached hereto as Exhibit 8 is a true and correct copy of a contract, between defendant and a number of other interrelated companies, entitled Intercompany Reinsurance Agreement, dated November 16, 1998, and effective as of January 1, 1998. Exhibit 8, which contains pages bates-labeled SAF000187-SAF000193, was produced by defendant to plaintiffs on August 19, 2002, in response to plaintiffs' First Set of Requests for Production of Documents to Defendant SAFECO Insurance Company of America ("First RFPs").

10. Attached hereto as Exhibit 9 is a true and correct copy of a letter obtained by plaintiffs from the Oregon Department of Consumer and Business Services, dated April 27, 2000, signed by Fox and addressed to the Oregon Department of Consumer and Business Services, Attention: Rates and Forms. Steeves identified Fox during her depositions in May and September 2002 as an employee of defendant who was responsible for making state insurance filings on behalf of defendant. Steeves May Depo. at 50:13-17; Steeves September Depo. at 12:18-13:1. Steeves further identified. Exhibit 9 as a document she has probably seen, and confirmed the veracity of certain statements made therein. Steeves May Depo. at 47:9-13; 50:10- 22.

11. Attached hereto as Exhibit 10 is a true and correct copy of excerpted portions of the transcript of the deposition of Steeves, taken by plaintiffs on September 11, 2002 ("Steeves September Depo.").

12. Attached hereto as Exhibit 11 is a true and correct copy of a contract, between defendant and ChoicePoint

Services, Inc., entitled Information Products Agreement, dated June 8, 2001. Exhibit 11, which contains pages bates-labeled SAF000098-SAF000103, was produced to plaintiffs by SAFECO Corporation on May 20, 2002, in response to plaintiffs' Third Request for Production of Documents to SAFECO Corporation.

13. Attached hereto as Exhibit 12 is a true and correct copy of a letter signed by Steve Rouse ("Rouse"), Assistant Director of SAFECO Personal Lines Insurance, to Trans Union's Insurance Division, dated June 26, 2002. Exhibit 12, bates-labeled SAF000168, was produced by defendant to plaintiffs on August 19, 2002, in response to plaintiffs' First RFPs.

14. Attached hereto as Exhibit 13 is a true and correct copy of an agreement, between defendant and Trans Union, entitled On-Line Service Agreement, signed March 13, 2000. Exhibit 12 was produced to plaintiffs by Trans Union on May 28, 2002, in response to a subpoena served by plaintiffs on Trans Union. Exhibit 13, which contains pages bates-labeled TU-S00004-TU-S00006, is signed by Rouse, and is referred to by Rouse in Exhibit 11.

15. Attached hereto as Exhibit 14 is a true and correct copy of an agreement, between defendant, Trans Union and Fair, Isaac and Company, entitled Assist On-Line Agreement, signed March 13, 2000. Exhibit 14 was produced to plaintiffs by Trans Union on May 28, 2002, in response to a subpoena served by plaintiffs on Trans Union. Exhibit 14 is signed by Rouse, and is referred to by Rouse in Exhibit 12.

16. Attached hereto as Exhibit 15 is a true and correct copy of Defendant's Response to Plaintiffs' First Set of Interrogatories to Defendant Safeco Insurance Company of America ("First ROGs"), served by defendant on plaintiffs on August 23, 2002.

17. Attached hereto as Exhibit 16 is a true and correct copy of a document, bates-labeled SAF000198-

SAF000199, produced by defendant to plaintiffs on September 5, 2002. Steeves recognized Exhibit 16 during her September deposition as a document that accurately sets forth defendant's insurance tier structures. Steeves September Depo. at 19:23-20:13.

18. Attached hereto as Exhibit 17 is a true and correct copy of excerpted portions of the transcript of the deposition of Zita Chubbuck taken by plaintiffs on December 11, 2002 ("Chubbuck Depo.").

19. Attached hereto as Exhibit 18 is a true and correct copy of excerpted portions of S. Rep. No. 103-209 (1993).

20. Attached hereto as Exhibit 19 is a true and correct copy of excerpted portions of H.R. Rep. No. 103-486 (1994).

21. Attached hereto as Exhibit 20 is a true and correct copy of 15 U.S.C. § 1681a, as amended by the Consumer Credit Reporting Reform Act of 1996.

22. Attached hereto as Exhibit 21 is a true and correct copy of 16 C.F.R. Pt. 601, App. C.

23. Attached hereto as Exhibit 22 is a true and correct copy of a document published by the Federal Trade Commission entitled "Consumer Reports: What Insurers Need to Know," dated October 1998. I downloaded Exhibit 22 in portable document format from the FTC's official website, <<http://www.ftc.gov/bcp/conline/pubs/buspubs/insurers.pdf>>, on December 27, 2002.

24. Attached hereto as Exhibit 23 is a true and correct copy of a letter opinion written on March 1, 2000 by FTC staff attorney Hannah Stires and addressed to James Ball. I downloaded Exhibit 23 from the FTC's official website, <<http://www.ftc.gov/os/statutes/fcra/ball.htm>>, on December 27, 2002.

25. Attached hereto as Exhibit 24 is a true and correct copy of Mick v. Level Propane Cases, Inc., No. 98-CV-959, Sept. 29, 1999, 1999 WL 33453772 (S.D. Ohio).

26. Attached hereto as Exhibit 25 is a true and correct copy of a document produced to plaintiffs by SAFECO Corporation on June 10, 2002. Exhibit 25, bates-labeled SAF000154, was among a set of documents recognized by Steeves during her September 2002 deposition. Steeves September Depo. at 69:4-18.

27. Attached hereto as Exhibit 26 is a true and correct [*sic*] of a letter from John A. Bennett to Steve D. Larson dated June 10, 2002, enclosing documents produced by SAFECO Corporation (including Exhibit 25) and stating that the enclosed documents "describ[e] the policies and procedures surrounding the use of credit information by the SAFECO insurance company underwriting entities." Exhibit 26 at 1.

28. Attached hereto as Exhibit 27 is a true and correct copy of a webpage I downloaded from the FTC's official website, <<http://www.ftc.gov/bcp/conline/edcams/fcra>>, on December 27, 2002. Exhibit 27 is specifically referred to by defendant in Exhibit 24.

DATED this 30th day of December, 2002.

/s/ MARK A. FRIEL
Mark A. Friel

[notary omitted]

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. CV 01-1464 BR

LORI SPANO, SHANNON MASSEY AND CHARLES BURR,
Plaintiffs,

vs.

SAFECO INSURANCE COMPANY OF AMERICA,
Defendants.

Confidential Deposition Upon Oral Examination Of
Barbara A. Steeves

December 11, 2002
Seattle, Washington

[Reporter and Attorney Information
and Table of Contents Omitted]

[4] BE IT REMEMBERED that on Wednesday, December 11, 2002, at 4333 Brooklyn Avenue Northeast, Seattle, Washington, at 4:25 p.m., before **CATHY M. ZAK, CCR,** Notary Public in and for the State of Washington, appeared **BARBARA A. STEEVES**, the witness herein;

WHEREUPON, the following proceedings were had, to wit:

<<<<<< >>>>>>

BARBARA A. STEEVES, having been first duly sworn by the Notary, deposed and testified as follows:

EXAMINATION

BY MR. LARSON:

Q Could you state and just spell your name for the record?

A Barb Steeves, S-T-E-E-V- -- as in Victor -- -E-S.

Q You had your deposition taken a couple times before in this case, corre t?

A Correct.

* * * * *

[15]

* * * * *

Q What variables would be used in rating then?

A It depends on how the product is designed. In a driving record, for example, we did not surcharge for driving activity in some of our tiers.

Q Who decides what factors and how they're weighted for underwriting?

A At what point?

Q At any point.

A Okay. Presently, it's the product manager.

Q Is that different than it used to be?

A We didn't have product managers in July of '01. That would have been home office underwriting.

Q And anyone else besides that prior to '01?

A Prior to '01, we did not have a matrix. We had underwriters and we had less markets. We had home office direction. And we had personal business

managers who managed the underwriters to assure the quality of their decisions.

Q And all those, the product managers and the underwriters, are all employees of Safeco?

A They're all employed by the Safeco insurance companies property and casualty.

[16]

Q And the lead company for the Safeco property and casualty companies is Safeco Insurance Company of America?

A Yes.

Q How would the type of vehicle be used as a factor in assigning a tier?

A Different vehicles have different loss experience associated with them. They also have different values, and that would come into consideration as to what we expect our loss experience to be with that vehicle.

If we didn't feel that we were getting enough premium to cover our expected losses on a Lamborghini, for example, we would choose to move them to a higher rated tier in order to get the appropriate premium or if we felt we didn't have the expertise to handle it with our rating program or our claims folks in the event of a claim, we would decline the risk entirely.

Q In October of 2002, Mr. Burr obtained insurance from Safeco, correct?

A Correct.

Q Have you looked at his underwriting records?

A Yes, I did.

* * * * *

[19]

* * * * *

Q And if Mr. Burr had a perfect credit score, what tier would he have been placed in?

A P-40.

Q That's like seven tiers higher?

A Yes.

Q And do you know what the difference in premium would have been?

A Yes. I'm going to assume you would like that. It would be 1,076.90 versus 1,749.70, which is his current rate after the full information was disclosed.

MR. LARSON: Could we mark that as Exhibit 13?

(Exhibit No. 13 marked for identification.)

Q (By Mr. Larson) I'm handing you what's been marked as Deposition Exhibit 12 (sic). Can you tell us what it is?

A This is a sheet that shows Mr. Burr's premium with our Safeco auto program as of October 22nd and how it changed as more information about his risk characteristics were revealed and also what his [20] premium would have been had he had the highest possible credit score.

Q Was Mr. Burr sent a fair credit reporting act notice because of the impact of his credit score?

A No.

Q Why not?

A There was no adverse action due to his credit score.

Q And is that because – I'm trying to find your language from before.

It's Safeco's position that it only needs to provide notice if they cancel, decline, increase premiums, or take away terms?

A Correct. We did not change the offering from his initial quote based on anything with his credit score.

We did change his premium because of unrevealed information obtained from outside vendors, motor vehicle report, and a Clue report upon which both times we did post-notify that we had used outside reports.

Q But those were not fair credit reporting act notices for credit, correct?

A They were fair credit reporting act notices for outside consumer reports, specific to the motor vehicle report and the Clue Report.

MR. BENNETT: And I'm giving you [21] some leeway. We're not going to go through the whole thing again.

Q (By Mr. Larson) Did you participate in making the decision that Safeco is not going to send FCRA notices for credit to those people it had just offered a quote?

A I believe we talked about this in prior depositions. There was an initial discussion on this back when we first started using credit. And at that time, that decision was made from our home office here.

Q Were you part of home office making the decision?

A I was in the field at that time.

Q Do you recall who in the home office made the decision?

A I believe in the last depositions where we talked about this, I don't know exact names. I would assume them to be some people who were in certain places at the time. Jeff Ogard was vice president of underwriting, potentially Bill Thomas who was the COO of our personal insurance.

Q Now you're in the home office though, correct?

A Correct.

Q And would you be involved in decisions about what fair credit reporting act notices should be sent under current law?

[22]

A Yes.

Q And have you looked at the issue again?

A I have been for the past few months with this specifically.

Q Even since this lawsuit has been filed?

A We continue to look at our processes and practices to make sure we're in compliance with the law.

Q And Safeco continues to take the position that it does not need to send an adverse action notice to a new business customer that is charged a higher premium because of their credit score if it's just the initial quote, correct?

MR. BENNETT: And I would object to the form of the question.

MR. LARSON: Could you read it back to me?

(Requested testimony read by the reporter.)

Q (By Mr. Larson) Let me rephrase that. And even since this lawsuit has been filed, Safeco continues to take the position that it does not have to send an adverse action notice to a new business customer that is charged more than the lowest possible rate available because of their credit score, correct?

[23]

A Safeco continues to take the position that we do need to post-notify when we cancel, when we increase the rate, when we decline insurance, when we decrease

the terms, and that has been a consistent posture for us.

Q Have you ever looked at any FTC opinions or FTC guidelines on their websites about when notices need to be sent?

A I have heard about FTC with some opinions. I have not gone to the website and read them.

Q Do you know if anyone at Safeco has?

MR. BENNETT: Steve, you know, we're here for a limited purpose, and, you know, she's been here twice before, and I'm not going to go into this area.

I guess on that, I'll instruct her not to answer.

MR. LARSON: Okay.

* * * * *

EXHIBIT 9

[Logo Omitted]

SAFECO PROPERTY & CASUALTY INSURANCE COMPANY

SAFECO Plaza
Seattle, WA 98185-0001

Phone: (206) 545-5000

April 27, 2000

Oregon Department of Consumer
and Business Services
Attention: Rates and Forms
350 Winter Street NE 440-5
Salem, Oregon 97310-0220

Attention: Ms. Jan Vitus, CIC

General Insurance Company of America 163-24732
Ultra Preferred Automobile
Effective Date: January 20, 2000 – New and Renewal Business
Our Letter Dated: January 13, 2000
Filing Number: PL-99-0707

Dear Ms Vitus:

This letter is in response to your March 13, 2000 request for additional information on the captioned filing. The response below follows in the order of your request.

1. *We enclose the Division Credit Report Underwriting Questionnaire. Please provide a written response to the entire questionnaire.*

   The Division Credit Report Underwriting Questionnaire is attached.

2. *Please provide a comparison chart for your response #1 in the Feb 23, 2000 letter. We would like to see specifically how the Ultra Preferred program differs from the Quality Plus preferred program. Also, please provide actuarial justification for each area of consid-*

eration (ie: financial stability; driving record; loss history).

a. An insurance score is calculated for consideration of financial stability. Choice Point is our third-party vendor. It provides the insurance score based on the *FairIsaac's* Model, and the *FairIsaac's* Model determines the thresholds. The Ultra Preferred and Quality Plus products both use the insurance score but in combination with the risk factors indicated below. No single prerequisite is given undue consideration during this process.

b. The following risk-based criteria is used in combination with the insurance score for the above captioned Ultra Preferred Auto program:

> The maximum number of violations/ accidents per household is one. The maximum loss history is one incident per household although young drivers may have no losses. The maximum number of incidents, both driving record and loss history combined, is two. This is based on the last three years of experience.

c. The following risk based criteria is used in combination with the insurance score for our Quality Plus Auto program:

> The maximum number of violations/ accidents per household is two. The maximum loss history is two incidents per household and young drivers may have up to one loss. The maximum number of incidents, both driving record and loss history combined, is two. This is based on the last three years of experience.

Please see the attached exhibit, Financial Stability Distribution — Based on FairIsaac's Model for actuarial support.

3. *Your response #2 in the Feb 23, 2000 letter talks about the 0.85 relativity factor being based upon market competition. Please be more actuarially specific.*

Please refer to the attached exhibit referenced in question #2. We arrived at the 0.85 relativity factor using this data in combination with market competition. Considering the Ultra Preferred Auto program is new, we will continue to evaluate this in the future as more credible data becomes available.

We hope this reply sufficiently addresses any concerns you may have regarding the introduction of our Ultra Preferred product and results in a favorable review of our filing. However, if you require additional information, please feel free to contact me at SAFECO's expense.

Sincerely,

/s/ BOB FOX

Bob Fox, Analyst
State Filings Department, T-14
(206) 545-6254 / FAX (206) 545-6466
robfox@safeco.com
BF/es

1. Identify your sources and the types of underwriting information (i.e.: MVR reports, credit reports, etc.) used:

   - By agents prior to quoting
     An insurance score and CLUE report are ordered as part of the quoting and application process and are used in establishing market level.
   - By agents prior to taking an application and/or binding coverage
     See above.
   - By insurer prior to issuing
     In addition to information provided by the application and agent, SAFECO may order MVR reports to verify the information provided.
   - At policy renewal
     There is no company standard of ordering these reports upon a policy renewal.

2. What criteria are used to determine if a credit report is ordered?
   An insurance score is requested on all new business, as it is a determinate of market level.

   Are the use of credit reports uniformly required for all quotations and sales? Are the results uniformly applied? Explain in detail an "no" answers.
   Yes. Insurance scores are required of all applicants.

   Do you use credit scoring for renewal underwriting? If yes, is it the same formula used for new business? Explain in detail.
   No.

3. Are credit reports used to prescreen an individual applicant (explain yes answer in detail):

   - By agents prior to quoting?
     Not to our knowledge

- By agents prior to taking application?
  Not to our knowledge
- By insurer prior to issuing?
  No
- To determine if additional reports will be ordered?
  No

4. Do you use a credit score to evaluate credit history for an applicant? If yes:
   - Who developed the scoring formula you are using?
     Fair, Isaac and Company, Inc.
   - Is the result used to determine premium, underwriting acceptance, or both? Explain.
     SAFECO uses insurance score, in combination with other rating variables, to determine market level and underwriting acceptance. SAFECO does not use credit information as the sole source for premium or underwriting decisions.
   - Is the formula available to the insurance regulator? If yes, include it. If no, please explain the elements used for the scoring purposes.
     The scoring formula is proprietary information of Fair Isaac and therefore may be available through Fair Isaac under a confidentiality agreement.
   - Is the scoring model known to any employee of your company?
     No.
   - Is the credit score for all applicants or quotes kept on file?
     SAFECO maintains insurance score information for those applicants issued a policy.
5. What training is provided to your sales force regarding the use of credit reports? Provide a copy of training plan and agents guide materials.
   SAFECO advises agents to inform a customer prior to ordering an insurance score that credit information

will be considered as part of the quoting and application process.

6. Are credit reports ever used as the sole source to make acceptability and premium decisions? If yes, explain in detail.
No.

7. Explain in detail the handling of a "no hit" or "limited history" response on a credit inquiry.
If an applicant has a "no hit" or "limited history" response, that person is eligible for our standard program and possibly our preferred program based on other underwriting and rating variables.

   Explain any situations where treatment differs from the treatment offered to your best credit scores.
See above.

   If less favorable treatment is given explain why.
An applicant with a "no hit" or "limited history" response is not eligible for our lowest priced market because our ability to predict the risk associated with that applicant has been limited.

8. What steps have you taken to ensure that you are in compliance with the Fair Credit Reporting Act?
SAFECO takes additional notice steps not required by the FCRA. SAFECO applications include notice to the applicants that consumer reports will be used in the processing of their policy and agents are being instructed to notify telephone applicants of the same. Renewal notification will disclose the use of consumer reports (i.e. MVR reports). Adversely affected insureds will receive written notices as required by the FCRA and may obtain a free copy of their report by simply requesting it from ChoicePoint consumer services.

Do all applications or requests for a quotation get written disclosure if an adverse decision, including rejection, refusal to quote, or a higher rate, is made based on a credit report?
Yes.

Are records of all adverse decisions maintained at the insurer's office?
No. Only when an application for insurance is submitted to the company are records maintained.

9. If you use credit report underwriting for multiple related insurers, would your answers differ if we treated the group as a single interest?
No.

EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. CV 01 1464 BR

LORI SPANO, SHANNON MASSEY, JOAN HORTON, CHARLES BURR AND PATRICIA MCGRATH,
Plaintiffs,

v.

SAFECO INSURANCE COMPANY OF AMERICA,
Defendant.

CONFIDENTIAL
Deposition Upon Oral Examination of
BARB STEEVES

September 11, 2002
Ten-fifteen a.m.
Safeco Plaza
Seattle, Washington

[Reporter and Attorney Information
and Table of Contents Omitted]

[3]

Barb Steeves, Being first duly sworn by the Notary, was examined and testified as follows:

EXAMINATION

BY MR. LARSON:

Q Please state and spell your name for the record.

A Barb Steeves, S-t-e-e-v-e-s.

Q Ms. Steeves, do you work for Safeco Insurance Company? Well, who do you work for?

A I work for Safeco.

(Deposition Exhibit No. 8 marked for identification.)

Q Let me hand you what's been marked as deposition Exhibit 8. That is an amended 30 (b) 6 notice of deposition where we asked Safeco Insurance Company of America to produce the person most knowledgeable about the use of credit scoring for underwriting a rating insurance by dependents and subsidiaries and complying with the Fair Credit Reporting Act. Are you the person that has been designated by the defendant to so testify?

A Yes.

* * * * *

[12]

* * * * *

Q Do you know if there was generally one new business placement guide for the whole country?

A Yes, there was one that was for the country. If there were state specific variances, then that guide would have been amended.

Q If you wanted to get a copy of that new business placement guide, how would you do it?

A I do not know. I would start asking some questions.

Q Who would you ask?

A I would ask some of our state filings people.

Q For example --

A Well, Kari Olson, I suppose.

Q Is that K-a-r-i?

A Yes.

Q Female?

A Female.

Q Is Bob Fox still doing filings?

[13]

A No, he is not.

Q Why would you ask the state filings people?

A My presumption would be that they would have possibly filed that in some state. I would also check with manual production people.

MR. LARSON: If you could mark this part of the deposition. That document we think is responsive.

MR. BENNETT: And that document we have discussed forever. That is what Safeco considers to be the heart of their business, how they underwrite and select risks and I hope we can reach something that will get you where you need to be and where we need to be because we are not going to produce it.

MR. LARSON: I understand. I just want to make sure that we know what document we are having a disagreement about.

MR. BENNETT: Okay, and I think we have done that. And I should note, and I meant to do so up front, once again we want to designate the deposition as confidential. We have a stipulated protective order.

* * * * *

[19]

* * * * *

Q So did the matrix have a column for the insurance or credit score rating?

A Yes, it had a reference to it, yes.

Q And did it have references to motor vehicle accidents?

A Yes.

Q And another reference to driving history?

A It had all the underwriting characteristics on one sheet.

Q How many underwriting characteristics?

A I wouldn't be able to tell you from memory.

Q Was it over 10?

A I don't believe so.

Q Somehow with this document you could line up the various variables and that would tell you what tier a person should be placed in?

A Correct.

(Deposition Exhibit No. 10 marked for identification.)

Q You have been handed what has been marked as Exhibit No. 10. Can you tell me what that document is?

[20]

A These are tier structures.

Q Did you prepare this document?

A No, I did not.

Q Do you know who did?

A No.

Q But it accurately sets forth the tier structures?

A Yes.

Q Have you seen it before today?

A Not in this format.

Q But looking at it now you can tell it's accurate?

A Yes.

Q Let's go first to auto in Oregon which is at the bottom of the first page of Exhibit 10. Do you see that?

A Yes.

Q If somebody had a good credit score and the other variables lined up to place them in Quality Plus auto, could that have happened in January of 2000?

MR. BENNETT: When you say good credit score, you mean good as to the designated category?

MR. LARSON: Yes.

[22]

Q The insurance score from January of 2000 until January of 2002 for auto in Oregon was only used to determine what tier you were placed in?

A It was only used for underwriting.

Q Only used for underwriting.

A Tier placement.

Q Tier placement is considered underwriting?

A Yes.

Q I think you also described that after the agent placed – looked at the matrix and placed a person in a tier, then they would put that person's information into some type of rating software, is that what you said?

A Yes.

Q What is that rating software called?

A Personal lines rating software.

Q And that personal lines rating software is what would determine the premium, is that correct?

A It would calculate the premium, yes.

Q And there is no variable in the personal ratings software for insurance score?

A No.

* * * * *

[24]

* * * * *

Q And prior to May 15 of 2000 was the nonstandard product, specialty auto?

A Yes.

Q In May of 2000 did the new business placement guide matrix change?

A Yes.

Q How did it change?

A I would have to see the documents before and after to exactly tell you that. My presumption would be that the place referring to specialty auto would not be there and a reference to InsurQuest would be.

Q Is it your recollection that after May 15 of 2000 until you stopped working in that department, anyway, as the personal region –

A Personal business manager.

Q Let me rephrase the question. From May of 2000 until January of 2002 did the agent obtain a description of the credit score as you described earlier, superior, excellent, good, fair or no market available, and then assign that insured to a tier which would include three tiers in InsurQuest?

A The agent would get a category, they would [25] look at the matrix which would determine tier. If they went to InsurQuest, the InsurQuest rating model would run the MVR, the score, the clue report and come back with a price 99 percent of the time or more

Q I want to make sure I understand the difference between specialty and InsurQuest. Was it basically the same in that the agent either assigned it to specialty or InsurQuest as a tier, or did the agent assign it to differ tiers within InsurQuest?

A No. The InsurQuest program, the system determined the tier.

Q And so that meant the rating system determined the tier, is that what you're saying?

A Actually it's a combined underwriting and rating system.

Q Now the combined underwriting and rating system for InsurQuest, did that use insurance score again in determining the tier?

A Yes.

* * * * *

[31]

* * * * *

Q I am sorry. I must have misunderstood. I thought you said that for InsurQuest after May 15 of 2000 it

was a combined rating and underwriting software that was used for InsurQuest.

A That's true, when you input the information we look at all of the underwriting variables and we determine the tier. Once we that, we build the rate and that's combined but there are two separate issues that we deal with within the software.

Q So ever since Safeco has been using insurance scores for auto across the country, it has only been used for tier placement, to your knowledge?

A To my knowledge that is correct.

Q And from January of 2000 until January of 2002 it was done by looking at a new business placement guide, correct?

A Correct.

Q And after that time the personal lines rating software did the tier determination?

[32]

A Correct.

Q Let me find out if there is one exception to that. For the InsurQuest in May of 2000 the agent would use the new business placement guide to determine whether that individual should be placed in InsurQuest, correct?

A Not necessarily. An agent may go directly to InsurQuest. An agent makes determinations every day about what the right company, what the right placement would be for someone.

Q But if the – I guess the point I was getting to, with InsurQuest the decision about tier 1, tier 2 and tier 3 was not made from the new business placement guide in May of 2000?

A Correct.

Q It was made by the personal lines rating software?

A It was made by the InsurQuest personal lines rating software, yes.

Q And that was different than the other personal lines rating software?

A True.

Q After January 17 of 2002 were those personal lines rating software still different?

A Yes.

[33]

Q How about after June 27th of 2002?

A No.

Q With respect to Oregon auto from January of 2000 to May of 2000, if an insured was placed in any tier below Ultra Preferred auto in whole or in part because of a credit score, were they provided a notice?

A What kind of notice?

Q A notice under the Fair Credit Reporting Act informing them that there had been an adverse action?

A That notice was not provided by Safeco. I don't know if they ever received one.

Q How else would they have received one?

A Through an independent agent.

MR. BENNETT: And I would state for the record an objection if the question implies that there has been an adverse action.

Q Did Safeco have any instructions or guidance for agents that you're aware of as to providing any Fair Credit Reporting Act notices?

A Yes.

Q What were those instructions?

A The same as for our company, based on how the [34] Fair Credit Reporting Act defines adverse action. If any of those situations present themselves we notify the customer that we used a consumer report and give them an avenue to deal with that information.

Q But from the company's perspective, if a person was placed in Quality Plus Auto for new business after January 20 of 2000, based in whole or in part on their credit score, did you deem that to be an adverse action?

A No.

Q And why was that?

A We deemed it to be an offer of insurance. Under the Fair Credit Reporting Act we need to provide notice if we cancel or decline and we do that. We need to provide notice if we increase a premium and we do that, and we need to provide notice if we take away some terms or do less favorable terms, and we do that. When we provide an offer of insurance, that is our offer of insurance. We have not changed anything.

Q Is there any difference between Ultra Preferred Auto and Quality Plus Auto other than the premium you pay?

[35]

A No.

Q No difference?

A No.

Q Same coverages?

A Same policy form, yes.

Q It is just issued by a different entity?

A Not necessarily.

Q What's the difference between the Ultra Preferred Auto and Quality Plus Auto in January of 2000?

A It would be the tier relativity.

Q What is tier relativity?

A It as the price for that tier.

Q And that tier might have been sold by a variety of companies?

A That tier is typically filed in one company. That company may also be the same company other tiers are filed in. It just depends on the state and the time and how we're set up at that time.

Q Are there any differences in having a policy issued by one company versus another within Safeco?

A Yes, there are. That's why we structure it that way.

[36]

Q What are the differences?

A It would depend on the state. I believe in my last deposition, I covered some areas where we may use different legal entities for different reasons. They may include how we work with the Department of Insurance and confidentiality protections, how the laws in the state read.

Q Will it make a difference to the consumer as to how much they pay for insurance or what benefits they receive?

A We see a difference from how we build the program because there is a difference to our business model. There is typically an impact to the customer in some way, shape or form.

Q Depending on which entity issues the policy?

A Yes.

Q Going back to May of 2000 for auto, if an agent applied for insurance for an insured with InsurQuest, without looking at the new business placement guide, and placed the information in the InsurQuest personal ratings software, would the agent know what impact the credit score made in assigning the tier for that individual?

[69]

* * * * *

(Deposition Exhibit No. 11 marked for identification.)

Q You have been handed what has been marked as Exhibit No. 11 which are documents that were produced to us by your attorney. Do you recognize those documents?

A Yes.

Q Can you tell me what they are?

A It's an underwriting question and answer piece on scoring, and also definition of terms.

Q And when you say an underwriting piece, who is the intended audience for this piece?

A I didn't draft it and I don't know exactly what the author's intent was. My impression would be underwriting service, anyone who needs to have an understanding of what we're doing and why.

* * * * *

BEST AVAILABLE COPY

EXHIBIT 22

FTC FACTS for Business

Consumer Reports

What Insurers Need to Know

As an insurer, you may use consumer reports to underwrite insurance policies and to screen high-risk applicants — as long as you comply with the Fair Credit Reporting Act (FCRA).

The Act

The FCRA is designed to protect the privacy of consumer report information and to guarantee that the information supplied by credit reporting agencies (CRAs) is as accurate as possible. Consumer reports may include information on an applicant's credit history, medical conditions, driving record, criminal activity, and hazardous sports. Amendments to the FCRA, which went into effect September 30, 1997, increase the legal obligations of insurers who use consumer reports.

The Adverse Action Notice

The following disclosure requirement applies to new applicants as well as current policy holders. When an adverse action is taken—such as a decision to deny insurance, increase rates, or terminate a policy—and it is based solely or partly on information in a consumer report, Section 615(a) of the FCRA requires you to provide a notice of the adverse action to the consumer. The notice must include:

- √ the name, address, and telephone number of the CRA that supplied the consumer report, including the toll-free telephone number for credit bureaus that maintain files nationwide;
- √ a statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give the specific reasons for it; and
- √ a notice of the individual's right to dispute the accuracy or completeness of any information the CRA furnished, and the consumer's right to a free report from the CRA upon request within 60 days.

Disclosure of this information is important because some consumer reports may contain errors. The adverse action notice is required even if information in the consumer report was not the main reason for the denial or rate increase. Even if the information in the report played only a small part in the overall decision, the applicant still must be notified.

While written adverse action notices are not required, many insurers provide them and keep copies for two years to show compliance with the FCRA.

Examples

The following examples illustrate situations where the adverse action notice must be given to insurance applicants.

> *A life insurance company orders a consumer report from a CRA, such as the Medical Information Bureau (MIB). Information contained in the MIB report leads to further investigation of the applicant. The application for insurance is rated or declined in whole or in part because of information obtained from the investigation.*

Section 604(g) of the FCRA requires an insurance company, or any other user of medical information, to get the

consumer's consent — orally, electronically, or in writing — before obtaining medical information. That means the life insurance company in this situation would have to get the consumer's consent before obtaining the consumer report from the MIB. In addition, since the MIB report formed part of the basis for the adverse decision in this case, the full Section 615(a) adverse action notice described above must be sent to the consumer.

> *A person with an unfavorable credit history, such as a bankruptcy, is denied automobile insurance at standard rates. Although the credit history was considered in the decision, the applicant's limited driving experience was even more important.*

The applicant is entitled to the Section 615(a) adverse action notice because the credit report played a part, however minor, in the insurer's decision to charge a higher premium.

Non-compliance with the FCRA

There are legal consequences for insurers who fail to get an applicant's permission before requesting a consumer report or who fail to provide required disclosure notices. The FCRA allows individuals to sue insurers for damages in federal court. A person who successfully sues is entitled to recover court costs and reasonable legal fees. The law also allows individuals to seek punitive damages for deliberate violations. In addition, the Federal Trade Commission, other federal agencies, and the states may sue insurers for non-compliance and obtain civil penalties.

For More Information

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC¬HELP (1-877-382-4357); TTY: 1-866-

653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.

Federal Trade Commission	For The Consumer
1-877-FTC-HELP	**www.ftc.gov**

Federal Trade Commission
Bureau of Consumer Protection
Office of Consumer and Business Education

October 1998

EXHIBIT 25

SCORED MARKETS

Resource Guide

Web sites

- http://www.ftc.gov/bcp/conline/edcams/fcra – Good resource. Includes links to the full text of the Fair Credit Reporting Act, information on what insurers need to know about the use of consumer reports, consumer brochures, and instructions on how a consumer can obtain a copy of their credit report.
- http://www.fairisaac.com – Home page includes sites for FAQ's, facts & fallacies, credit scoring, insurance scoring, and related articles.
- http://www.Choicepointinc.com – Site has limited value. Most of the sub-sites deal with corporate information and topics.
- http://ho_sv007/roadwayonline/2000/february/scoring.htm – "Insurance Scoring 'Takes Underwriting to a Whole New Level'".

Publications from other sources *

- "Insurance Innovations – Consumer Credit Report Information and personal Lines Insurance Underwriting Overview" Fair, Isaac and Company, Incorporated March 1999 **
- "Q & A Consumer Credit Reports and Personal Lines Insurance Underwriting" Fair, Isaac and Company Incorporated March 1999 **
- "Q & A Insurance Bureau Scores Agent's Most Frequently Asked Questions" Fair, Isaac and Company, Incorporated October 1996 1998? **

- "Graphical View of Correlation Between Consumer Credit Information and Insurance Loss Ratio" Fair, Isaac and Company Incorporated March 1999
- "Insurance Issues in the Press" Four articles on use of consumer credit previously published in various insurance periodicals. Fair, Isaac and Company Incorporated.
- "What's Credit Got To Do With It?" Brochure – National Association of Independent Insurers 1999 **

* *Contact bobbos@safeco.com for copies*

** *Previously distributed to PBM's.*

[Attorney Names/Addresses Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Case No. CV 01-1464 BR

LORI SPANO, ET AL.,
Plaintiffs,

v.

SAFECO INSURANCE COMPANY OF OREGON, ET AL.,
Defendants.

CLASS ACTION

PLAINTIFFS' FOURTH AMENDED COMPLAINT

SUMMARY AND OVERVIEW

1. This is a class action on behalf of all purchasers of personal lines of insurance from defendants from January, 2000 to date (the "Class Period").

2. Defendants sell personal lines of insurance in Oregon and in other states.

3. Since at least January, 2000, defendants have used information contained in consumer reports when underwriting policies for personal lines of insurance. Defendants have taken adverse actions with respect to plaintiffs and those similarly situated based on this information, but failed to provide the notification of the adverse action as required by the Fair Credit Reporting Act, 15 U.S.C. § 1681.

JURISDICTION AND VENUE

4. Jurisdiction is conferred by 15 U.S.C. § 1681. The claims asserted herein arise under 15 U.S.C. § 1681.

5. Venue is proper in this District pursuant to 15 U.S.C. § 1681. Defendants do business in this District and many of the insurance policies involved in this case were issued in this District.

BACKGROUND TO THE CLASS PERIOD

6. Based on information and belief, at least by January, 2000, defendants began using consumer report information to underwrite insurance policies for personal lines of insurance.

FIRST CLAIM FOR RELIEF
For Violation of 15 U.S.C. § 1681

7. Plaintiffs incorporate paragraphs 1 through 6 by reference.

8. Plaintiffs Lori Spano, Shannon Massey and Charles Burr, and all others similarly situated, purchased insurance policies for personal lines of insurance from defendants during the Class Period. Defendants took an adverse action with respect to underwriting the policies of Ms. Spano, Ms. Massey and Mr. Burr, and all others similarly situated, based on information contained in a consumer report.

9. 15 U.S.C. § 1681(m) requires users of consumer reports to provide oral, written or electronic notice of any adverse action taken with respect to any consumer that is based in whole or in part on information obtained in a consumer report.

10. Defendants willfully failed to notify plaintiffs, and all others similarly situated, of the adverse action.

11. 15 U.S.C. § 1681(n) provides that any person who willfully fails to comply with any requirement imposed under § 1681(n) is liable to the consumer for damages of not less than $100 and not more than $1,000. Accord-

ingly, plaintiffs, and all those similarly situated, are entitled to recover statutory damages.

12. Plaintiffs, and all those similarly situated, are also entitled under 15 U.S.C. § 1681(n) to recover such amount of punitive damages as the court may allow.

13. 15 U.S.C. § 1681(n) provides that the cost of the action together with reasonable attorney fees as determined by the court are also recoverable by the plaintiffs, and all others similarly situated.

CLASS ACTION ALLEGATIONS

14. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased personal lines insurance policies from defendants from January, 2000 to date.

15. The members of the Class are so numerous that joinder of all members is impracticable. During the Class Period, defendants issued hundreds of policies. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

16. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

(a) Whether the underwriting practices of defendants constitute adverse actions under the Fair Credit Reporting Act;

(b) Whether 15 U.S.C. § 1681 was violated by defendants;

17. Plaintiffs' claims are typical of those of the Class because plaintiffs and the Class failed to receive notification of the alleged adverse actions as required by the Fair Credit Reporting Act.

18. Plaintiffs will adequately protect the interests of the Class and has retained counsel who are experienced

in class action securities litigation. Plaintiffs have no interests which conflict with those of the Class.

19. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment as follows:

A. Declaring this action to be a proper class action pursuant to Rule 23;

B. Awarding plaintiffs and the members of the class statutory damages, punitive damages, attorney fees and costs; and

C. Awarding such other legal and equitable relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated this 24th day of April, 2003.

STOLL STOLL BERNE LOKTING
& SHLACHTER P.C.

By: /s/ STEVE D. LARSON

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Attorneys for Plaintiffs

[Attorney Names/Addresses Omitted]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 01-1464 BR

LORI SPANO, ET AL.,
Plaintiffs,

v.

SAFECO INSURANCE COMPANY OF AMERICA, ET AL.,
Defendants.

DEFENDANTS' ANSWER, DEFENSES AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' FOURTH AMENDED COMPLAINT FOR VIOLATION OF THE FAIR CREDIT REPORTING ACT

[Jury Trial Demanded]

Defendant SAFECO Insurance Company of America has been granted summary judgment and therefore does not answer. SAFECO Insurance Company of Oregon ("SOO"), SAFECO Insurance Company of Illinois ("SOI"), and American States Insurance Company ("AS") (collectively "Defendants") for their Answer admit, deny and allege as follows:

1.

In response to paragraph 1 of the Complaint, Defendants deny Plaintiffs' allegation that this is a class action because there has been no certification of a class and no other basis alleged authorizing Plaintiffs to appear on behalf of any other person. Defendants deny all remaining allegations in paragraph 1.

2.

In response to paragraph 2 of the Complaint, SOI and AS admit that they each sell personal lines of insurance in Oregon and in other states. SOO admits that it sells personal lines of insurance in Oregon, but denies that it sells personal lines of insurance in other states.

3.

In response to paragraph 3 of the Complaint, Defendants admit that, in or after January 2000, they have used information contained in consumer reports when underwriting policies for personal automobile insurance in Oregon. AS and SOI have also used information contained in consumer reports when underwriting personal automobile insurance in certain other states. Furthermore, Defendants have also used consumer reports to underwrite homeowners and renters insurance. Except as admitted, Defendants deny the allegations in paragraph 3.

4.

In response to paragraph 4 of the Complaint, Defendants admit that Plaintiffs are making their claims under 15 U.S.C. § 1681 and deny all remaining allegations.

5.

In response to paragraph 5 of the Complaint, Defendants admit that they do business in this District and that venue is proper in this District. Except as admitted, Defendants deny the allegations in paragraph 5.

6.

In response to paragraph 6 of the Complaint, Defendants admit that, in or after January 2000, they used consumer report information to underwrite personal lines automobile insurance in Oregon. After January 2000, Defendants have used consumer reports to underwrite homeowner's insurance and renter's insurance. Except as

admitted, Defendants deny the remaining allegations in paragraph 6.

7.

Defendants incorporate by reference their answers to paragraphs 1 through 6 set forth above.

8.

In response to paragraph 8 of the Complaint, each Defendant admits and denies as specifically set forth below:

a. As to Plaintiff Lori Spano, SOO admits that it refused to reinstate an auto insurance policy issued to Ms. Spano that had been cancelled by SOO for failure to pay premium. Separately, SOI admits that Ms. Spano's auto insurance policy was endorsed to it from SAFECO National Insurance Company on or about September 23, 1997. Subsequently, on or about May 11, 2001, Ms. Spano's auto insurance policy was endorsed to SOO. Defendant AS denies any contact with Ms. Spano in the relevant timeframe.

b. As to Plaintiff Massey, SOI admits that on or about January 12, 2001, it provided renters insurance to Ms. Massey. Defendants SOO and AS deny any contact with Ms. Massey.

c. As to Plaintiff Charles Burr, Defendant AS admits providing personal auto insurance to Mr. Burr on or about July 6, 2001. Defendant SOO admits that it issued a separate policy of auto insurance to Mr. Burr on or about October 22, 2002. SOI denies any contact with Mr. Burr.

Except as admitted, Defendants deny all remaining allegations of paragraph 8.

9.

In response to paragraph 9 of the Complaint, Defendants deny that Plaintiffs' attempt to paraphrase 15 U.S.C. § 1681m is accurate or complete, or that any answer is required to paragraph 9. To the extent an answer

is required, Defendants admit that 15 U.S.C. § 1681m sets forth notice requirements on the person taking an adverse action that is based, in whole or in part, on a consumer report, as all relevant terms are defined in the Fair Credit Reporting Act ("FCRA").

10.

Defendants deny that any of them took adverse action as to Plaintiffs Spano, Massey, and/or Burr, and deny the rest and remainder of any allegations in paragraph 10.

11.

In response to paragraph 11 of the Complaint, Defendants deny that Plaintiffs' attempt to paraphrase 15 U.S.C. § 1681n is accurate or complete. Defendants deny the allegations in paragraph 11.

12.

Defendants deny the allegations in paragraph 12 of the Complaint.

13.

In response to paragraph 13 of the Complaint, Defendants deny that Plaintiffs' attempt to paraphrase 15 U.S.C. § 1681n is accurate or complete. Defendants deny the allegations in paragraph 13.

14.

Defendants deny the allegations in paragraph 14 of the Complaint.

15.

Defendants deny the allegations of paragraph 15 of the Complaint, except Defendants admit that they each issued hundreds of policies during the alleged "Class Period."

16.

Defendants deny the allegations in paragraph 16 of the Complaint.

17.

Defendants deny the allegations in paragraph 17 of the Complaint.

18.

Defendants deny the allegations in paragraph 18 of the Complaint.

19.

Defendants deny the allegations in paragraph 19 of the Complaint.

FIRST DEFENSE

(FAILURE TO STATE A CLAIM)

1.

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

(DOCTRINE OF PRIMARY JURISDICTION)

2.

Primary jurisdiction for this matter is vested in the insurance divisions of the respective states at issue.

FIRST AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

3.

The claims asserted, or a portion thereof, are barred by the applicable statute of limitations.

SECOND AFFIRMATIVE DEFENSE

(REASONABLE PROCEDURES TO ASSURE COMPLIANCE)

4.

Pursuant to 15 U.S.C. § 1681m(c), reasonable procedures were in place to assure compliance with the provisions of 15 U.S.C. § 1681 and therefore Defendants may not be held liable for the alleged violations of the Fair Credit Reporting Act.

WHEREFORE, having fully answered Plaintiffs' Complaint, and having alleged affirmative defenses, Defendants pray for entry of Judgment as follows:

a. Denying any request to certify this matter as a class action;

b. Entry of Judgment dismissing Plaintiffs' Complaint and granting Judgment in favor of Defendants; and

c. Including in the Judgment an award to Defendants of their reasonable costs.

Dated this 12th day of May 2003.

BULLIVANT HOUSER BAILEY, PC

By /s/ JOHN A. BENNETT

JOHN A. BENNETT, OSB #75040

Telephone: (503) 228-6351

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American States Insurance Company

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

WILLIAM K. SUTER
Clerk of the Court
(202) 479-3011

September 26, 2006

Mr. Michael K. Kellogg
1615 M St., NW
Suite 400
Washington, DC 20036

Re: Safeco Insurance Company of America, et al.
v. Charles Burr, et al.
No. 06-84

Dear Mr. Kellogg:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is granted. The case is consolidated with No. 06-100 and a total of one hour is allotted for oral argument.

Sincerely,

/s/ WILLIAM K. SUTER
William K. Suter, Clerk